

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 7 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

RAYMOND RICHARD WHITALL,

Plaintiff-Appellant,

v.

STEPHANIE TRAN PHAN, M.D., Primary  
Care Physician, CDC and Rehabilitation; A.  
NEWTON, Supervising R.N. II, Salinas  
Valley State Prison; MS. DOWLESS, Public  
Health Nurse, Salinas Valley State Prison;  
LIZ DOEHRING, N.P.C. TTA Nurse  
Practitioner, Salinas Valley State Prison;  
LAW SAN FU, M.D., Physician and  
Surgeon, Salinas Valley State Prison;  
LAWRENCE GAMBOA, M.D., Chief  
Physician and Surgeon, Salinas Valley State  
Prison; WILSON, Dr., Chief Nurse  
Executive, Salinas Valley State Prison; KIM  
KUMAR, M.D., Chief Medical Executive,  
Salinas Valley State Prison; ELAINE  
CANTU, Acting Chief Executive Officer,  
Salinas Valley State Prison; B.  
BRIZENDINE, Psy. D., MBA, CCHP, Chief  
Executive Officer, Salinas Valley State  
Prison; ROGER L. MARTINEZ,  
Correctional Lieutenant, Salinas Valley State  
Prison; GONZALEZ, Correctional Captain,  
SVSP Health Care Services, Salinas Valley  
State Prison; W. L. MUNIZ, Warden, Salinas

No. 21-16463

D.C. No. 3:17-cv-05889-CRB

MEMORANDUM\*

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Valley State Prison; KATHLEEN  
ALLISON, Director, CDC and  
Rehabilitation; N. WALKER, Associate  
Warden; J. LEWIS, Deputy Director, Policy  
and Risk Management,

Defendants-Appellees.

Appeal from the United States District Court  
for the Northern District of California  
Charles R. Breyer, District Judge, Presiding

Submitted July 5, 2023\*\*

Before: WALLACE, O’SANNLAIN, and SILVERMAN, Circuit Judges.

Raymond Richard Whitall, a California state prisoner, appeals pro se from the district court’s summary judgment for defendants in his 42 U.S.C. § 1983 action alleging deliberate indifference to his serious medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004), and we affirm.

The district court properly granted summary judgment to defendants because Whitall failed to raise a genuine dispute of material fact as to whether the treatment for his arthritis “was medically unacceptable under the circumstances and was chosen in conscious disregard of an excessive risk to [his] health.” *Id.* at 1058

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\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

(explaining that a difference of medical opinion is insufficient, as a matter of law, to establish deliberate indifference) (citation and internal quotation omitted).

On appeal, Whitall argues that he has raised several disputes of material fact, and that the question of whether his treatment was medically unacceptable should be presented to a jury. However, Whithall has not presented evidence that Phan's treatment was medically unacceptable, and so summary judgment for the defendants was appropriate. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986) (plaintiff's complete failure of proof concerning an essential element of his case necessarily renders all other facts immaterial).

**AFFIRMED.**